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FISCAL IMPACT STATEMENT

LS 6150

BILL NUMBER: HB 1016

NOTE PREPARED: Mar 24, 2006

BILL AMENDED: Mar 14, 2006

SUBJECT: Alcohol and Tobacco Matters.

FIRST AUTHOR: Rep. Ayres

FIRST SPONSOR: Sen. Bray

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Alcohol Server Training:* This bill requires a person who trains:

- (1) alcohol servers; and
 - (2) individuals who plan to train alcohol servers;
- to hold a trainer certificate issued by the Alcohol and Tobacco Commission (ATC).

The bill also requires:

- (1) a certified trainer to renew a certificate every three years by filing a renewal application form, completing a refresher course, and paying a \$45 fee;
- (2) certain retailer permittees, dealer permittees, or management representatives of the retailer or dealer permittees to be trained not later than 120 days after the date the permittee receives a permit; and
- (3) certain retailer permittees and dealer permittees to ensure that each alcohol server is trained not later than 120 days from the date the alcohol server begins employment.

(Current law requires a retail permittee, dealer permittee, or management representative to be trained not later than 90 days after the date the permittee receives the permit and an alcohol server to be trained not later than 90 days after the date of employment.)

The bill requires:

- (1) the ATC to notify retailer and dealer permittees of the certification requirements at the time the permittees renew the retailer or dealer permits;
- (2) the ATC to approve and establish training programs; and
- (3) training programs to provide a server certificate to individuals who successfully complete the program.

This bill allows the ATC to:

- (1) observe training at any time; and
- (2) adopt rules to carry out the training and certification requirements.

The bill changes the deadline by which permittees and alcohol servers must be trained from January 31, 2008, to January 1, 2009.

Illuminated Signs: The bill provides that a primary source of supply or wholesaler may not provide an illuminated advertising sign to a dealer or retailer in a manner that violates the trade practice restrictions of the ATC or the law.

State Fair Commission: The bill also requires the ATC to issue a permit to the State Fair Commission.

New Year's Eve Sales: This bill allows for extended time for alcohol sales on New Year's Eve if New Year's Eve falls on a Sunday.

Employee Permit Changes: The bill also prohibits the issuance of an alcoholic beverage employee's permit to an individual with two convictions for operating while intoxicated if:

- (1) the first conviction occurred less than ten years before the date of the permit application; and
- (2) the individual completed the sentence for the second conviction less than two years before the permit application.

The bill provides:

- (1) that if an individual has at least three convictions for operating while intoxicated in the immediately preceding ten years, the ATC may not grant a permit to the individual;
- (2) that if an individual has one or two convictions in the immediately preceding ten years, the ATC may grant or deny a permit to the individual; and
- (3) for the revocation of a permit upon an individual's subsequent conviction for operating while intoxicated.

New Permits Outside the Quota: This bill allows for five new alcohol permits within a district in an economic development area with a unit of the National Park Service partially located within the district, and with an international deep water seaport located within the district. The bill requires the ATC to conduct an auction of the permits.

Farm Winery Provisions: This bill redefines "farm winery". The bill also allows a farm winery to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a not-for-profit basis. The bill allows a farm winery to offer wine tastings and sell the winery's wine at three locations apart from the winery. The bill also increases to 30 days (from 9 days) the amount of time in a calendar year during which a farm winery may participate in a trade show or exposition.

This bill prohibits the holder of a farm winery distiller's permit from selling brandy at wholesale and specifies that the holder may sell brandy only at retail on the permitted premises.

The bill allows a person to bring 18 liters of wine into Indiana for personal use.

The bill also allows farm winery brandy distiller permittees to: (1) sell brandy to consumers by the glass, bottle,

or both; and (2) conduct business at three additional locations apart from the distillery.

The bill repeals provisions concerning: (1) certain certification requirements; and (2) an affidavit requirement for a holder of a farm winery permit.

Shipment of Wine: This bill provides that a wine manufacturer located inside or outside Indiana that wants to sell wine directly to a consumer must obtain a direct wine seller's permit. The bill establishes an annual direct wine seller's permit fee of \$100. This bill makes it a Class A infraction for violating the direct wine shipping statutes and increases the penalty to a Class A misdemeanor or Class D felony if the seller has prior unrelated offenses.

Beer & Wine Wholesalers: The bill establishes a wine wholesaler permit fee for a wholesaler that sells less than 12,000 gallons of wine and brandy annually. This bill also removes residency requirements for wine and beer wholesalers.

Municipal Golf Course Permits: The bill also provides that any city that owns a golf course may obtain a permit for the retail sale of alcoholic beverages.

Effective Date: Upon Passage; July 1, 2006.

Explanation of State Expenditures: *Alcohol Server Training:* This bill will increase the administrative costs of the ATC. P.L. 161-2005 required the ATC to adopt rules to carry out the training and certification requirements for alcohol server training. Therefore, there should be no additional costs incurred from these provisions. The provisions in the bill requiring the ATC to notify retailer and dealer permittees of the certification requirements at the time the permittees renew the retailer or dealer permits will result in new administrative costs to the ATC. The bill also requires the ATC to establish an alcohol server training program. ATC excise officers currently provide a free voluntary training to approximately 3,000 retailers each year.

It is anticipated that the ATC can implement the provisions of this bill through the use of existing staff and resources. The costs may also be offset by the fee established in the bill for trainers to obtain a training certificate.

Penalty Provision: State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. However, any expenditure increase is likely to be small. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. If offenders can be housed in existing facilities with no additional staff, the average cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Alcohol Server Training:* It is estimated that this bill will increase training certificate fee revenue that will be deposited in the ATC's Enforcement and Administration Fund. The bill repeals IC 7-3-1.5-7 (added by P.L. 161-2005), which currently requires that a trainer must be a:

(A) nonprofit corporation or organization; or

(B) for-profit corporation or organization that does not have an interest in a permit issued to a primary source of supply, a wholesaler, a retailer permittee, or a dealer permittee;

in order to receive a training certificate. By repealing this section, the bill increases the number of entities or

persons that could obtain a training certificate. The bill also sets the fee for a training certificate at \$45. The ATC currently has the authority to set this fee, but the bill takes this authority away from the ATC and sets the fee at \$45. As of January 6, 2006, the ATC reported that they had not set a fee or adopted rules for training and certification requirements for alcohol server training.

State Fair Commission: The bill requires the ATC to issue a retailer permit to the State Fair Commission. This would allow sales of alcohol on the State Fair Grounds at anytime allowed under current law. It would still be unlawful to sell alcohol during the State Fair.

New Year's Eve Sales: The bill allows the supplemental retailer to sell alcohol on Sunday, December 31, from 10:00 a.m. to 3:00 a.m. the following day. This would only affect sales of alcohol in years where December 31 is a Sunday. The provision of the bill is not estimated to have a significant fiscal impact.

Employee Permit Changes: This bill would prohibit the issuance of an employee permit to any applicant who has two unrelated convictions for operating while intoxicated (OWI) if:

- (1) the first conviction is less than 10 years old; and
- (2) the sentence for the second conviction was completed less than two years before the application.

The bill allows the ATC to issue or deny an employee's permit to a person with one OWI conviction in the last 10 years if the person has completed their sentence before the application.

The bill also allows the ATC to issue or deny an employee's permit to a person with two unrelated OWI convictions in the last 10 years if the person completed their sentence more than two years before the application.

This bill also requires a farm winery employee who serves complimentary wine at the farm winery to obtain an employee permit. This provision will result in an indeterminable increase in employee permit fee revenue. The number of employees who serve complimentary wine at farm wineries is unknown. The fee for an employee permit is \$30, and the permit must be renewed every two years.

New Permits Outside the Quota: The bill allows the ATC after June 30, 2006, to issue not more than five new three-way, two-way, or one-way permits to a restaurant in a district not more than 500 feet from a district meeting the following requirements:

- (1) The district is within an economic development area, an area needing redevelopment, or a redevelopment district as established under IC 36-7-14.
- (2) A unit of the National Park Service is partially located within the district.
- (3) An international deep water seaport is located within the district.

The only area known to meet these criteria is in Portage, Indiana. An applicant is not eligible for a permit under this provision if the applicant, within the two years before June 30, 2006, sold a retailers' permit that was for an eligible premises. The bill requires the ATC to conduct an auction of these permits. Therefore, the increase in permit fee revenue from these provisions is indeterminable.

Farm Winery Provisions: The bill also allows a farm winery to sell its wine to consumers by the bottle at a farmers' market that is operated on a not-for-profit basis. Under this bill a farm winery would also be allowed to offer wine tastings and sell its wine at three locations apart from the winery. The bill also increases to 30 days (from 9 days) the amount of time in a calendar year during which a farm winery may participate in a trade show or exposition.

The holder of a farm winery distiller's permit is prohibited under this bill from selling brandy at wholesale, and the bill specifies that the holder may sell brandy only at retail on the permitted premises. Alternatively, the bill does allow a farm winery *brandy* distiller to:

- (1) sell brandy to consumers by the glass, bottle, or both; and
- (2) conduct business at three additional locations apart from the distillery.

This bill also redefines "farm winery" to mean a wine-making establishment that does not annually sell more than 500,000 gallons of wine in Indiana, excluding wine shipped to an out-of-state address. Under current law, a farm winery also would have had to use certain ingredients which were produced in Indiana. This bill repeals this requirement as well as the residency requirements for issuance of a farm winery permit.

All of these changes will only have a fiscal impact to the extent that they increase the sale of wine by farm wineries in Indiana, and also to the extent that the number of farm winery permit holders increases. The fee for a farm winery permit is \$500 (see *Background* below for more details).

Shipment of Wine: This bill provides that a wine manufacturer located inside or outside Indiana that wants to sell wine directly to a consumer must obtain a direct wine seller's permit. The bill also establishes an annual direct wine seller's permit fee of \$100. The increase in fee revenue from this provision is indeterminable.

To obtain a direct wine shipment permit, the manufacturer must meet certain conditions as listed in the bill. The list below contains some of the conditions which must be met.

- (1) The seller may only ship to a consumer who is 21, has an Indiana address, and intends to use the wine for personal use (not resale).
- (2) The seller is also required to have the consumer involved in one face-to-face transaction at the seller's place of business before shipping to the consumer.
- (3) The applicant for the permit may not sell more than 500,000 gallons per year in Indiana, excluding wine shipped out-of-state.
- (4) The applicant also may not ship to any single consumer, and a single consumer may not receive, in Indiana, more than 216 liters of wine (288 bottles (750 ml each)) in a calendar year.

The bill does allow a person to bring 18 liters of wine (24 bottles (750 ml each)) into Indiana for personal use. These provisions could have a fiscal impact to the extent that wine sales increase (see *Background* below for more details).

Penalty Provision: This bill makes it a Class A infraction for violating the direct wine shipping statutes and increases the penalty to a Class A misdemeanor or Class D felony if the seller has prior unrelated offenses. The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund. More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. However, any increase in revenue is likely to be small. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are the same.

Beer & Wine Wholesalers: The bill provides that a wine wholesaler who sells less than 12,000 gallons of wine and brandy per year is required to pay a permit fee of \$100 rather than \$2,000. The exact decrease in permit fee revenue from this provision is unknown, but the annual decrease will be equal to the number of wine wholesalers which currently sell less than 12,000 gallons of wine and brandy multiplied by \$1,800 (which

represents the loss of permit fee revenue per wholesaler).

Municipal Golf Course Permits: The bill allows a city-owned golf course to sell alcohol if the golf course obtains all the necessary permits. Under current law this was only allowed for golf courses owned by the cities of Anderson and Mishawaka.

Background: To the extent that any of the provisions of this bill affect alcoholic beverage sales, state revenues will be impacted. Sales changes will affect collections of both alcoholic beverage excise taxes and the Sales Tax. The alcoholic beverage excise taxes are distributed in varying amounts to the following funds: state General Fund, the Post War Construction Fund, the ATC Enforcement and Administration Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund. The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population. Sales Tax revenue is deposited in the: Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

Explanation of Local Expenditures: *Penalty Provision:* If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. However, any cost reduction is likely to be small. The maximum term of imprisonment for a Class A misdemeanor is up to one year.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small. Court fees for both misdemeanors and felonies are the same.

State Agencies Affected: Alcohol and Tobacco Commission; State Fair Commission.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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